



*Town of Tyngsborough*  
*Planning Board*  
25 Bryants Lane,  
Tyngsborough, Massachusetts 01879-1003  
Office: (978) 649-2300 ext. 115

MINUTES  
June 21, 2012

## **APPROVED**

Attachments:

1. Meeting Agenda
2. Tyngsborough Commons Lay-Out Plans

Members Present: Steve Nocco  
Caryn DeCarteret  
William Gramer  
Tom Delmore  
Steve O'Neill  
Jesse Johnson, David E. Ross Associates

**7:00pm -** Meeting called to order by Chairman Tom Delmore

**7:02pm** **166 & 168 Middlesex Road (M21, Parcels 21 & 42, L0)** – Special Permit and Site Plan Special Permit for the razing of an existing building and the construction of a ~9,870 s.f. building with associated parking and utilities. Continued from June 7, 2012.

The project traffic study has not been completed and therefore the applicant requested a continuance.

**S. Nocco:** Motion to continue this hearing until 7/19/12

**W. Gramer:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

**7:20pm      DISCUSSION**

**Tyngsborough Commons**

Developer Walter Eriksen and Atty. Scott Eriksen appeared before the Commission to resume discussion regarding their request for a minor change to the Special Permit Decision for Tyngsborough Commons. They submitted a layout plan rendering that reflected the proposed changes. The proposed modification involves changing the first floor retail space below the condominium buildings into residential space, and making the entire building residential apartments for lease. Mr. Eriksen stated that he has taken on a partner in the project who will be taking over development of the apartment complex. This would occur within the two buildings at the center of the complex. Additional retail space would then be added in the building toward the Westford Road entrance and designed to accommodate a community playground area. A pool was proposed for the apartment complex for use by the residents.

S. O'Neill reiterated his concern over the changes and suggested that the Board get an opinion from Town Counsel regarding changing a Special Permit. He went on to say that these proposed changes would completely change the dynamic of the already approved project and the concept that was presented at Town Meeting when the overlay district by-law was passed, and he wondered whether it was necessary to have the matter return to Town Meeting. Attorney Scott Eriksen commented that at Town Meeting the by-law was passed and that the issuance of the Special Permit by the Board is separate from the by-law, that the presentation at Town Meeting in support of the by-law was only a concept and subject to change. W. Gramer asked whether at a minimum a public hearing before the Board was required on the basis of the change being "substantial" vs. "insubstantial" and Atty. Eriksen stated that he felt the change was insubstantial. W. Gramer commented that there are guidelines within the comprehensive permit (40B) statute to help make that determination and perhaps those guidelines applied here. C. DeCarteret stated that she did not believe an opinion from Town Counsel was needed and T. Delmore agreed and both were concerned about a further delay in the project and believed that the design change was insubstantial and that the project overall still had great benefits to the Town. W. Gramer stated that he believed it would be useful to have an opinion from Town Counsel at least on the issue of substantial vs. insubstantial change and how the Board should go about making that decision.

Mr. Eriksen said that he will continue to evaluate the project but stated that if the Board did not approve the proposed modifications, then he would not go forward with the project at all.

The Board recognized the time and money spent of this project so far and would like to see it move forward, but felt that a Town Counsel opinion would be helpful for them to pursue Mr. Eriksen's request for modification. The Board discussed sending a letter to Attorney Zaroulis requesting an answer on two points and hoping to have a response in time for the August 2<sup>nd</sup> meeting.

**S. O'Neill:** Motion to get an opinion from Town Counsel whether the proposed design changes need to be approved by Town Meeting, and what should the Board consider in determining insubstantial versus substantial design changes as far as requiring a public hearing.

**S. Nocco:** 2<sup>nd</sup> the motion

**In Favor: 3 Opposed: 2**

**Passes: 3-2**

#### **ENGINEER REPORTS - None**

#### **ADMINISTRATIVE**

**S. O'Neill:** Motion to appoint Tom Delmore as the Planning Board's designee to the Energy & Environmental Affairs Committee.

**W. Gramer:** 2<sup>nd</sup> the motion

**In Favor: 4 Opposed: 0 Abstain: 1**

**Passes: 4-0-1**

**S. O'Neill:** Motion to approve the minutes of June 7, 2012 with suggested revisions.

**S. Nocco:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

**S. O'Neill:** Motion to cancel the July 5, 2012 meeting due to the holiday.

**C. DeCarteret:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

**7:40pm**

**S. O'Neill:** Motion to adjourn

**W. Gramer:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

Minutes respectfully submitted by  
Pamela Berman, Planning Board Administrative Assistant